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15 Attorneys for Plaintiff, Stellar Records, LLC

16 Boanerge Mendez, Defendant *pro se*
17 960 Torero Plaza
18 Campbell, CA 95008
19 Email: bomendez05@gmail.com

20
21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23 Stellar Records, LLC,) Case Number: 5:17-cv-4423-BLF
24 Plaintiff(s),)
25 vs.) PLAINTIFF'S CASE MANAGEMENT
26 Boanerge Mendez,) STATEMENT & [PROPOSED] ORDER
27 Defendant(s).)
28)

29 THE PLAINTIFF, Stellar Records, LLC, by its attorney, Michael T. Hopkins, submits
30 this CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing
31

1 Order for All Judges of the Northern District of California dated January 17, 2017 and Civil
2 Local Rule 16-9.
3
4

5 1. Jurisdiction & Service

6 This claim is brought pursuant to 17 U.S.C. §501 *et. seq.* (hereinafter referred to as the U.S.
7 Copyright Act). Subject matter jurisdiction is vested in the Court pursuant to 28 U.S.C. §§1331
8 and 1338, as this claim arises under the laws of the United States. No issues regarding personal
9 jurisdiction exist. The Defendant resides in this District, and he was personally served in this
10 District with the Summons and Complaint on August 28, 2017 (dkt. 6).

11
12 2. Facts

13 Stellar Records, LLC owns approximately 950 copyrights for karaoke sound recordings.
14 Stellar has alleged that Mr. Mendez, through various websites and on-line ads, has sold one or
15 more external computer hard drives containing illicit copies of 380 of Stellar's copyright
16 protected recordings. Stellar commenced this suit against Mr. Mendez for copyright
17 infringement. Mr. Mendez is appearing pro se, and has filed an answer denying the allegations of
18 every paragraph of Stellar's complaint, based upon a lack of information or knowledge.
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22 3. Legal Issues

23
24 Plaintiff is unaware of any *disputed* points of law at this time.
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1 4. Motions

2 Plaintiff previously filed a Motion to admit Attorney Michael T. Hopkins *pro hac vice*
3 (dkt. 3), which was granted by Magistrate Judge Lloyd on August 8, 2017 (dkt. 7). No other
4 motions have been filed, or are pending. After completion of initial discovery, Stellar Records
5 anticipates filing a Motion for Partial Summary Judgment on the issue of liability.
6

7

8 5. Amendment of Pleadings

9 Plaintiff anticipates that an amendment of pleadings may be required after an initial
10 round of discovery is completed, and requests until April 15, 2018 to do so without further leave
11 of Court.
12

13

14 6. Evidence Preservation

15 Counsel for Plaintiff has reviewed the Guidelines Relating to the Discovery of
16 Electronically Stored Information (“ESI Guidelines”), and has provided a copy of those
17 Guidelines to Mr. Mendez. After suit was commenced, Mr. Mendez closed PayPal and email
18 accounts which he used to facilitate the sale of the hard drives containing the recordings at issue.
19 At this time, it is unclear whether and to what extent these records will be recoverable. Mr.
20 Mendez has indicated he subsequently received sales records from PayPal, which have not yet
21 been produced to Plaintiff. Counsel for Plaintiff and Mr. Mendez telephonically conferred on
22 November 14, 2017, pursuant to Fed. R. Civ. P. 26(f), regarding, *inter alia*, reasonable and
23 proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this
24 action.
25
26

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2 7. Disclosures

3 Plaintiff served Rule 26(a) Initial Disclosures on Defendant via U.S. Mail on November
4 7, 2017. Plaintiff identified four (4) key witnesses and summarized the relevant information they
5 will provide to prove Plaintiff's infringement claims. Plaintiff also itemized eighteen (18)
6 separate categories of evidence in support of its claims. The evidence in twelve (12) categories
7 has already been produced. The custodians of the remaining six (6) categories of evidence have
8 been identified.

9
10 Defendant has not yet served Rule 26(a) Initial Disclosures.
11
12

13 8. Discovery

14 (a) Discovery to date. In an attempt to reach a compromise resolution of this case,
15 Defendant voluntarily produced certain financial records, including a 2016 federal tax return,
16 bank statements, and payroll stubs. Plaintiff has produced the evidentiary materials attached to
17 its complaint as Exhibits A through L, and has made the remaining categories of materials
18 identified in its *Initial Disclosures* available for production.
19

20 Plaintiff served a *First Set of Written Interrogatories* and *First Requests for Production*
21 of *Documents* upon Mr. Mendez, via U.S. mail, on November 25, 2017. Plaintiff issued a
22 subpoena duces tecum upon PayPal on November 27, 2017, to obtain records related to Mr.
23 Mendez's sale of the allegedly illicit sound recordings.
24

25 (b) Anticipated discovery. Factually, the scope of Mr. Mendez's allegedly infringing
26 sales of copyright protected sound recordings, and the gross sales derived therefrom, is unknown.
27 Discovery will be required on the issues of liability and damages. Plaintiff anticipates having to
28

1 conduct one to three discovery depositions, and possibly serve an additional two to three
2 subpoenas duces tecum on third parties, such as Google and various internet service providers
3 utilized by Mr. Mendez in the sale of sound recordings.

4 The scope of discovery to be undertaken by Defendant is unknown to Plaintiff.
5

6 (c) Rule modification and E-discovery order. Plaintiff does not anticipate the need to
7 limit or modify the discovery rules. No economies will be realized by conducting discovery in
8 phases. An e-discovery order is not necessary, as Mr. Mendez closed the PayPal and email
9 accounts utilized by him in the sale of hard drives. Relevant e-discovery will most likely have to
10 be obtained directly from the service/account providers.

11 (d) Discovery disputes. There are no discovery disputes pending.
12

13 (e) Privilege. Plaintiff does not anticipate any issues arising regarding privilege or the
14 protection of trial preparation materials.

15 (f). Scheduling. See section 17, infra.
16

17 9. Class Actions
18

19 Not applicable.
20

21 10. Related Cases
22

23 There are no related cases.
24

25 11. Relief
26

27 Plaintiff has alleged Mr. Mendez infringed 380 of its copyrights in karaoke sound
28 recordings. Pursuant to 17 U.S.C. §504, Stellar is entitled to recover its actual damages and Mr.
Mendez's profits arising from said infringement, to the extent there is no duplication, **or**

1 statutory damages.

2 Stellar cannot at this time compute its actual damages or Mr. Mendez's profits, as it is
3 currently unaware of the number of copies of each copyright protected recording sold by Mr.
4 Mendez, his cost of production, or gross sales. This deficiency will hopefully be corrected as
5 discovery continues.

6 Stellar Records maintains and alleges that Mr. Mendez is guilty of willful copyright
7 infringement. As such, it is entitled, at its discretion, to an award of statutory damages in an
8 amount of \$750.00 to \$150,000.00, per work infringed. This would equate to an award of
9 statutory damages in the range of \$285,000.00 to \$57,000,000.00 for infringement of the 380
10 sound recordings at issue, to be determined by a jury.

11 Stellar Records will also be requesting that it recover its actual attorney fees and costs in
12 maintaining this action, pursuant to 17 U.S.C. §505. Any such award, and the amount thereof, is
13 determined by the Court, in its discretion, usually employing the Load Star method of analysis.
14 Stellar estimates that its fees and costs exceed \$13,000.00 at this time, and could easily exceed
15 \$300,000.00 through trial.

16 Finally, Plaintiff is requesting permanent injunctive relief, barring any further
17 infringement of its copyrights by Defendant.

18

19 12. Settlement and ADR

20 The parties have agreed and requested to engage in a Settlement Conference with a
21 Magistrate Judge.

1

2 13. Consent to Magistrate Judge For All Purposes

3 All parties **have not** consented to have a magistrate judge conduct all further proceedings,
4 including trial and entry of judgment.

5

6 14. Other References

7 The case is not suitable for reference to binding arbitration, a special master, or the
8 Judicial Panel on Multidistrict Litigation.

9

10 15. Narrowing of Issues

11 Plaintiff anticipates moving for partial summary judgment on the issue of liability, so as
12 to narrow the issues remaining for trial. After discovery is concluded, certain addition facts may
13 not be in dispute relative to damages, such as the number of copies of Plaintiff's copyright
14 protected sound recordings sold by Defendant, and the gross revenue derived from said sales.

15

16 16. Expedited Trial Procedure

17 This is case is not amenable to be handled under the Expedited Trial Procedure of
18 General Order 64, Attachment A. Plaintiff will require discovery from commercial third parties,
19 such as PayPal and Google, and possibly other ISPs. While the scope of this discovery is not
20 fully appreciated at this time, it is unlikely it can be accomplished in an expedited manner.
21 Additionally, the limitations imposed by the expedited trial procedure concerning the scope of
22 available discovery will prejudice Plaintiff's trial preparation.

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2 17. Scheduling
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Event	Proposed date
Defendant's Rule 26(a) initial disclosures	February 8, 2018
Joinder/Amendment to pleadings	April 15, 2018
Disclosure of experts' reports for issues on which a party bears the burden of proof	June 15, 2018
Disclosure of responsive experts' reports	August 1, 2018
Disclosure of rebuttal experts' reports	September 1, 2018
Discovery Cut-off (written discovery must be served so that responses are due on or before cut-off date)	October 1, 2018
Filing of Dispositive Motions	November 1, 2018
Final pretrial conference	TBD by Court
Trial	TBD by Court

17 18. Trial
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Plaintiff has requested a jury trial, which is anticipated to last 2 to 3 days.

21 19. Disclosure of Non-party Interested Entities or Persons
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23

Plaintiff filed a Civil Local Rule 3-15 "Certification of Interested Entities or Persons" on August 9, 2017 (dkt. 8), which provided:

The SamZaBeth-Grace Irrevocable Trust Dated July 10, 2017, a privately-owned family trust domiciled in the State of Massachusetts, owns the entire membership interest in Stellar Records, LLC, a Wisconsin limited liability company, and as such has a potential

financial interest in the outcome of this litigation.

20. Professional Conduct

Counsel for Plaintiff has reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other

Pursuant to Civil L.R. 16-9(a), attached hereto as Exhibit A is a Declaration of counsel, detailing the parties' efforts to agree to the content of a joint CMS. Mr. Mendez was fully cooperative in this effort.

Dated this 27th day of November, 2017.

/s/ Michael T. Hopkins
Michael T. Hopkins (LEAD COUNSEL)
Appearing *pro hac vice*
WBN: 1014792
email: mth@ip-lit.us

IP-Litigation.US, LLC
757 N. Broadway, Suite 201
Milwaukee, WI 53202

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT/MAGISTRATE JUDGE

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mth@ip-lit.us

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10 | Attorneys for Plaintiff, Stellar Records, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Jose Division**

14 STELLAR RECORDS LLC

Plaintiff.

VS.

Case No. 5:17-cv-4423-BLF

18 | BOANERGE MENDEZ,

***DECLARATION OF MICHAEL T.
HOPKINS CONCERNING PREPARATION
OF THE CASE MANAGEMENT
STATEMENT***

19 || Defendant.

22 MICHAEL T. HOPKINS, under penalty of perjury, deposes and states to the Court as
23 follows:

24 1. I am counsel of record for Plaintiff in the above matter and make this Declaration
25 based upon information and facts known to me personally to be true.

1 2. On November 8, 2017, Declarant prepared a draft Joint Case Management Statement
2 and forwarded it to Mr. Mendez, via email.

3 3. After additional email communications, the undersigned and Mr. Mendez scheduled a
4 telephone conference for November 14, 2017, to discuss the contents of the draft CMS. The
5 telephone conference lasted approximately 30 minutes, during which the undersigned and Mr.
6 Mendez discussed each section of the CMS.

7 4. On the evening of November 14, 2017, following the telephone conference, Mr.
8 Mendez forwarded an email to Declarant, requesting additions and modifications to the draft
9 CMS.

10 5. On November 15, 2017, Declarant made certain of Mr. Mendez's requested additions/
11 modifications to the draft CMS, and returned it to him with an explanatory email.

12 6. Between November 16 and 21, 2017, Declarant and Mr. Mendez had several email
13 communications, wherein Mr. Mendez indicated he was going to meet with counsel to review the
14 draft CMS.

15 7. On November 22, 2017, Mr. Mendez advised he would be more comfortable filing the
16 CMS closer to the time of the Case Management Conference, and that we should file separate
17 CMSs.

18 8. Mr. Mendez was fully cooperative in reviewing and commenting upon the draft Joint
19 CMS.
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2 I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true
3 and correct.

4 Dated this 27th day of November, 2017.
5

6 /s/ Michael T. Hopkins
7 Michael T. Hopkins (LEAD COUNSEL)
8 Appearing *pro hac vice*
9 WBN: 1014792
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Attorneys for Plaintiff, Stellar Records, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Jose Division**

STELLAR RECORDS, LLC,

Plaintiff,

Case No. 5:17-cv-4423-BLF

VS.

BOANERGE MENDEZ.

Defendant.

CERTIFICATE OF SERVICE

On the 27th day of November, 2017, the undersigned served a copy of *Plaintiff's Case Management Statement and [Proposed] Order* upon the Defendant, Boanerge Mendez, by mailing a copy thereof, with this *Certificate of Service*, via U.S. Mail, First Class postage prepaid, addressed as follows:

Boanerge Mendez
960 Torero Plaza
Campbell, CA 95008

Dated November 27, 2017.

/s/ Michael T. Hopkins

Michael T. Hopkins (LEAD COUNSEL)
Appearing *pro hac vice*
WBN: 1014792
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Counsel for Plaintiff